



#1 Placement Preference: Reunification

- ✓ The preference for reunification is embodied in Idaho Code §§ 16-1601(1) and 16-1615(5)(b) which require that IDHW make reasonable efforts to prevent removal of the child from the home and/or reunify the child with the family unless aggravated circumstances are found.

Best Practice Recommendation:

If the child is an Indian child consult the ICWA Benchcard before considering permanency options. ICWA imposes preferred placement requirements for Indian children.

#2 Placement Preference: Termination of Parental Rights and Adoption

- ✓ Termination of parental rights is the second most preferred option as it meets all the goals of permanency:
 - It provides the child with a family relationship that will last throughout the child's lifetime, with full and permanent responsibility to the new parents;
 - It is legally secure from modification, and without ongoing state intervention and/or monitoring; and
 - Adoption subsidy benefits are available to assist the adoptive parents and to meet the child's needs.
- ✓ The preference for termination of parental rights and adoption is embodied in two provisions of the Idaho CPA:
 - Where the parent subjects the child to aggravated circumstances or when the child is an abandoned infant, the state is required to file a petition to terminate parental rights (within 60 days of the determination of aggravated circumstances or abandonment) unless there are *compelling reasons* why termination would not be in the child's best interest. Idaho Code § 16-1624.
 - Where a child has been in the custody of the agency for 15 of the last 22 months, the state is required to file a petition to terminate parental rights, unless the court finds that (1) termination is not in the best interest of the child, or (2) reasonable efforts have not been provided to reunite the child with its parents; or (3) the child is placed permanently with a relative. Idaho Code § 16-1629(9).

Best Practice Recommendation:

Adoption should not be dismissed as an option simply because a child is older or has special needs. Adoption subsidies, compacts for interstate placement of children, and other programs, including programs specifically for older children and children with special needs, have greatly increased the number of families who are both willing and able to provide a safe home and a loving family for an older child or a child with special needs. With rare exceptions, there should no longer be children labeled "unadoptable."

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Permanency Planning Options

- ✓ Guardianship is lower in priority than reunification and termination of parental rights and adoption because it does not achieve most of the aspects of permanency and has some significant disadvantages.
- ✓ In appropriate cases, guardianship can have several advantages over termination of parental rights.
 - It does not affect the child's right to financial benefits from or through the parents, such as child support, inheritance, or social security.
 - It is flexible. The order appointing the guardian can include whatever provisions are appropriate for the child to have continuing contact with either or both parents (to the extent that continuing contact is in the child's best interest) and can be readily modified as circumstances change.
 - Guardianship may offer the potential for an agreed-upon solution that has the active support of all parties and avoids contested termination proceedings. For example:
 - A parent might be threatened by the loss of identity from termination of parental rights, yet be unable or unwilling to fulfill the role of parent. If the threat to the parent's sense of identity is removed, the parent may be supportive of an alternative arrangement that allows the child to develop a parental relationship with the guardian.
 - A family member may be committed to providing the child with a parental relationship through guardianship but may object to adoption, feeling that the guardian's responsibility already arises through the family relationship without the need for termination and adoption.
 - The potential guardian may be willing to take on the challenge of a troubled child, but not willing to take the risk of financial responsibility for the child's negligent or criminal actions.
 - An older child may object to adoption and rebel against an adoptive placement, but may accept the same placement if it is in the form of a guardianship.
- ✓ Guardianship also has significant disadvantages.
 - Guardianship fails to achieve most of the aspects of permanency. It automatically terminates when the child reaches majority, it is subject to modification at any time (which can also mean subject to repeated litigation), and it is subject to ongoing monitoring until the guardianship is terminated.
 - The financial assistance that is available in adoption is NOT available in guardianship. Some assistance is available for guardianships, but it is limited. It is available only when parental rights have been terminated and where there is documented evidence that the child could not be placed for adoption.
 - Most insurances policies that will cover a guardian's child, such as medical insurance, will not cover a ward.
 - A person who is willing to undertake guardianship but is not willing to undertake adoption may be underestimating the responsibilities of guardianship, with damaging consequences to the child if the guardian later decides he or she is no longer willing and able to serve as guardian.
 - Although guardianship may offer the potential for settlement, it is too often used as a quick and easy means to an end, and the placement does not receive the careful scrutiny necessary to ensure that the placement is in the child's best

#3 Placement Preference: Guardianship

Guardianship (con't.)

Practice Note:

ASFA Requirement: Before approving guardianship as the permanent plan for a child, federal law requires that IDHW document, and the court must find, compelling reasons why adoption is not in the best interest of the child. This finding is not required if the guardian is a family member. (This finding is not required if the child is placed in permanent guardianship; however, a guardianship under Idaho's guardianship statute is not a permanent guardianship.) 45 CFR 1355.20(a).

Best Practice Recommendation:

Before selecting this option, careful scrutiny should be made as to the advantages and disadvantages of this placement option in light of the individual circumstances and needs of the child. If guardianship is recommended and selected as the permanent plan for the child, the parties should be prepared to present information and the court should make findings as to why guardianship is more appropriate for the needs of the child than termination of parental rights and adoption. If a guardianship is implemented, it may be appropriate to keep the CPA case open for a period of time and conduct further review hearings, to ensure that the placement is successful and to maintain jurisdiction over the child in case the placement is not successful.

Least Preferred Preference: Long Term Foster Care

- ✓ Long-term foster care is an appropriate option only in limited situations. Long-term foster care may include placement with a foster family, a group home, or a residential facility.
- ✓ There are three types of situations in which long-term foster care may be appropriate:
 - The child is a violent juvenile offender or juvenile sex offender. In such cases, even if a willing family could be found, placement of the child in a family setting would place other family members at risk.
 - The child has such serious and chronic disabilities that the child cannot function in a family setting or requires more care than can be provided in a family setting. In such cases, careful inquiry should be made into the adoption subsidy and other benefits available, not only through child protection services, but through other IDHW programs and through other state and federal programs.
 - Long-term care is part of a transitional living situation to prepare a youth for adulthood. Where long-term foster care with emancipation is the proposed permanency plan, careful inquiry should be made as to why long-term foster care is the most appropriate way of preparing the youth for adulthood and maintaining family ties.

Practice Note:

ASFA Requirement: Before approving long-term foster care as the permanent plan for a child, the agency must document, and the court must find, compelling reasons why adoption, guardianship, or long-term placement with a relative is not in the best interest of the child. 45 CFR 1355.20(a).

Best Practice Recommendation:

Frequent review hearings should be held to ensure that appropriate services are provided to the child and to determine if circumstances have changed so that a more permanent placement can be achieved.





Permanency Planning Options

- ✓ The Interstate Compact on the Placement of Children (ICPC)
 - A child may not be placed out-of-state without a court order. Idaho Code §16-1629(8). Problems arise when the proposed placement for a child is out-of-state. Traditionally, jurisdiction of a state court or state agency ended at the state line. The agency in the other state had no obligation to make pre-placement investigation, to supervise placements, or to provide services to promote the success of the placement. The sending state was not financially or legally responsible for a child placed outside its jurisdiction. There was tremendous risk that a child placed in another state would “fall between the cracks” of the two state systems.
 - The ICPC was enacted in all 50 states and Washington, D.C. to address this problem. Idaho Code § 16-2107. The agency in the sending state must submit a written application to the agency in the receiving state, which decides whether or not to accept the placement. Once accepted, the agencies in the two states can enter into agreements as to what services the agency in the receiving state will provide on behalf of the agency in the sending state. The sending state remains responsible for the cost of the services. The court in the sending state retains jurisdiction over the child and may order the child returned to the sending state.

Best Practice Recommendation:

The court should require that the placement be made in accordance with the ICPC and that the placement agreement specify the services to be provided by the receiving state, including a written report of pre-placement investigations and written reports as to the status and welfare of the child. Because the ICPC process can be time-consuming, it should be implemented as early as possible in the CPA process when an out-of-state placement for a child is contemplated. NOTE that a “courtesy supervision” is NOT an ICPC placement, and has none of the protections of an ICPC placement.

Other Factors

- ✓ Family Relationships
 - Placement with an individual or couple who already have a positive relationship with the child helps to provide the child with a greater sense of safety, security, and continuity. The family is the most likely – but not the only – source for such individuals or couples. In addition, placement with a family member may offer the opportunity for an agreed-upon solution, because a parent may be willing to stipulate to placement of the child if the parent knows that the child will be with a family member.
 - There can, however, be problems with the placement of a child with a family member.
 - Because of the family member’s relationship to the parent, and given the sometimes intergenerational aspects of neglect and abuse, the family member may unduly minimize the extent or the effects of the abuse or neglect, may be partly or primarily motivated by a desire to protect the parent from governmental intervention, or may also have a history of neglecting or abusing children.
 - The family member may underestimate the potential difficulties in providing a home for the child, and may later seek to withdraw as alternative placement for the child when unanticipated problems become apparent.

Best Practice Recommendation:

Potential placements with family members should be scrutinized as carefully as any other potential foster or adoptive placement to ensure the safety of the child and the success of the placement.

Other Factors Con't.

- ✓ Sibling Relationships: A child who has been removed from the parents should not also suffer the loss of being separated from brothers and sisters. Efforts should be made to place the siblings together. However, separate placement of siblings may be necessary where a sibling is at risk of harm from another sibling.

Best Practice Recommendation:

If siblings can't be placed together, then the case plan or permanency plan should address the provisions that can be made so that the siblings can maintain contact with each other.

- ✓ The Indian Child Welfare Act and Other Ethnic/Cultural Issues
 - ICWA has detailed provisions governing preferences for both foster and adoptive placement of Indian children. Priority is given to members of the child's extended family, other members of the child's Indian tribe, or placements given priority by the tribe. One of the purposes of ICWA is to recognize the unique relationship between the United States and the Indian tribes; another purpose is to enable the child to develop and/or maintain the child's ties to his or her cultural heritage. *See* ICWA, 42 USC §§ 1915, 1901, 1902.
 - There is no law establishing similar preferences for other groups, and issues of race, ethnicity, and national and cultural heritage in foster and adoptive placements are highly controversial. The Multiethnic Placement Act of 1994 ("MEPA") as amended, limits the extent to which race, ethnicity, or national or cultural heritage may be considered in placement decisions. 42 USC §1996(b). The purpose of that act was to remove barriers to permanency by prohibiting discrimination against children or prospective parents based on race or national origin. Specifically, the act sought to do away with the practice of "race-matching," which resulted in large numbers of children spending long periods of time in foster care, waiting for prospective parents of the same race or national origin.

General Best Practice Recommendation:

Ultimately, the resolution in any individual case will depend on the individual circumstances of that case. Although preferences may provide useful tools for analysis, the successful placement of the child depends on thorough efforts to identify all possible placements and thorough assessment of the advantages and disadvantages of each placement based on the child's individual needs. IDHW has a best practices manual that identifies the long-term interests of children and the many considerations that should be assessed. In addition, the Idaho Child Protection manual is available at <http://www.isc.idaho.gov/childapx.htm>.

